

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL MISC.APPLICATION No 1288 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE C.K.BUCH

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1. Whether Reporters of Local Papers may be allowed : YES  
to see the judgements?
2. To be referred to the Reporter or not? : NO
3. Whether Their Lordships wish to see the fair copy : NO  
of the judgement?
4. Whether this case involves a substantial question : NO  
of law as to the interpretation of the Constitution  
of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge? : NO

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HARSHAD SUKHLAL BAVISHI

Versus

MANISH ARVINDBHAI PATEL

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Appearance:

MR BG JANI for Petitioner

MR SM SHUKLA for Respondent No. 1

MR BY MANKAD, APP for Respondent No.2

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CORAM : MR.JUSTICE C.K.BUCH

Date of decision: 24/09/1999

#### ORAL JUDGEMENT

Heard learned counsel Mr. BG Jani for the petitioner, Mr. SM Shukla, learned counsel for Respondent no.1 and Mr. BY Mankad, learned APP for Respondent no.2 State.

Today, learned counsel Mr. Jani has tendered one letter dated 10.3.1999 which is on the letterhead of UCO Bank written in Hindi and allegedly signed by the Mr CD

Pande, Manager, Inquiry, UCO Bank, Nagpur. The endorsement is clear wherein the Bank has clarified that the cheque was returned by the Bank because the same was outdated. The provisions of sec.138 of the Negotiable Instruments Act are self-explanatory and I do not see any need to reproduce the same. In view of the language of section 138 of the Negotiable Instruments Act and the scheme, I am of the view that the endorsement made by the Bank would not help the complainant side.

MR SM Shukla, learned counsel appearing for Respondent no.1 ( original complainant ) has submitted that he has adequate evidence to show that the endorsement made by the Bank is not correct because the postal article carrying the cheque was booked on 28th July, 1998 and the same was delivered on 29th July, 1998. The certificate issued by the postal authority on 27th August, 1998 indicates that postal article registered vide No.281 on 28th July, 1998 had reached the destination on the next day. Even for the sake of arguments, contents of the letter written by the postal authority dated 27th August, 1998 is accepted, it would not be legal and proper to hold, prima facie, that the cheque was returned because of insufficiency of funds etc. In absence of this type of endorsement, the complaint cannot be sustained and shall have to be quashed and set aside.

Mr. BG Jani, learned counsel appearing for the petitioner has placed reliance in support of his case on the decision of this Court in Arunbhai Nilkanthrai Nanavati v/s Jayaben Prahladbhai, through her Power of Attorney Holder Shri Kishorbhai Prahladbhai & Anr., reported in 1999 (2) GLH 168 ( Coram: H.R.Shelat,J) and submitted that presentment of the cheque should be made within six months or within the period of validity at the paying Bank and not the collecting Bank and if cheque is received by the payee Bank after the period of validity, is a stale cheque and does not warrant any criminal action under the provisions of the Negotiable Instruments Act.

I have gone through the said decision. In my view, it squarely applies to the facts of the present case. I would like to reproduce relevant observations made in para-6 of the said judgment :-

" In the case on hand, the cheque was entrusted to the collecting bank, on the last day of the 6 months period and the paying bank received the cheque on 28th July 1997 after the period of 6 months was over. The paying bank therefore refused to make the payment on the ground that the cheque had become stale, and secondly the drawer of the cheque had closed the

account. As held in the case of NEPC Micon Ltd. v. Magma Leasing Ltd. (1999)4 SCC 253, the meaning of the words "account closed" is that the cheque is returned as unpaid on the ground that the amount of money standing to the credit of that account is insufficient to honour the cheque and that would also attract Section 138. The crucial points raised for consideration are, where the cheque is required to be presented, whether the cheque is required to be presented, whether at the collecting Bank or at the paying Bank and whether presentment in this case is in consonance with Section 138 of the Act. It is pertinent to note that in the earlier portion of Section 138, the words "a banker", "returned by the bank unpaid", "with that bank" appear and when in Proviso (a) to that section, the words "to the bank" appear. It may be mentioned that for the sake of convenience, the words quoted are underlined in the Section reproduced hereinabove. Earlier articles "a" and in later part article "the" are used in the provision. The same are indicative of the Bank qua presentment of a cheque. Article "a" is called the "indefinite article". It does not point out any definite or particular person, place or thing. Article "the" refers to some definite or particular place, person or thing. If a particular person, place or thing is to be referred, the same would be referred to using article "the". Article "the" subsequently appearing envisions the same place, person or thing referred to earlier using article "A". In the earlier portion of Section 138 of the Act, the word "banker" is prefixed by article A and subsequently in the Proviso (a) to the said sections, the word "Bank" is prefixed by article "the". The expression "the Bank", therefore, unequivocally and without any ambiguity or confusion indicates that the Banker referred to earlier is envisaged in Proviso (a) to Section 138. Reading whole Section, no other construction is possible or emerges. In order to know which Bank is referred, the opening words and later on the aforesaid words "the Bank unpaid" and "with that bank" are the good, definite and sure guide. In the opening portion of Section 138, the cheque, drawer, account with, suffixing above quoted words "a banker" are mentioned. Thereafter, there is a mention about payment, account, discharge, liability and return of a cheque suffixing the above quoted word "by

the Bank" unpaid, and a little later about agreement is mentioned suffixing above quoted words with "that Bank". All these words contemplate and indicate that the presentment of the cheque must be at the Bank on which the cheque is drawn i.e. drawee or paying Bank. Subsequently, as mentioned hereinabove, the words "the bank" in Proviso (a) to Section 138 are used. use of the Article "the" prefixing the word "bank" in Proviso (a) to Section 138, therefore, with all certainty and indubitably indicates the "Bank" referred to in the earlier portion of Section 138, viz. the Drawee or Paying Bank on which the cheque is drawn. I also for my view find support in the decision of Punjab & Haryana High Court rendered in a case of Omprakash v. Gurucharan Singh (1998)92 Company Case 398."

In the result, this Criminal Misc. Application is hereby allowed. The complaint being Criminal Case No. 1535/98 pending in the Court of Metropolitan Magistrate Court No.18 Ahmedabad is hereby quashed and set aside and further process issued by the learned Metropolitan Magistrate Court No.18, Ahmedabad against the petitioner is also quashed and set aside.

Rule is made absolute.

Dt; 24.9.1999 [ C.K. BUCH, J]

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